United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1907

DONALD J. LAREAU,
Petitioner-Appellant

-vs-

MYRON H. HANSON,
Respondent-Appellee

Brief For The Appellant

Donald J. LaReau
Box 100
Somers, Connecticut

In Propria personam

74-1907 B P/S

TABLE OF CONTENTS

POINTS AND AUTHORITIES

APPENDIX

A. Appellant's letter of inquiry to state superior court clerk, dated October 1, 1974

B. Appellant's letter of inquiry to state superior court clerk, dated November 4, 1974

C. Appellant's letter of inquiry to state superior court clerk, dated November 14, 1974

D. Letter by Connecticut Prisoner Leo E. Savin to Attorney Barbara M. Milstein, et al.

E. Assignment of Habeas Corpus Matters at Somers Prison, September 25, 1974

F. Assignment of Habeas Corpus Matters at Somers Prison, October 23, 1974

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DONALD J. LAREAU,
Petitioner-Appellant

-vs-

No. 74-1907

MYRON H. HANSON, Hearing Officer, Division of Parole, Connecticut Department of Corrections,
Respondent-Appellee

BRIEF FOR THE APPELLANT

ISSUES PRESENTED

1. Whether Connecticut Superior Courts Are Causing Serious Injury To The Delicate Balance Of Federalism By Failing To Comply With Federal Due Process Requirements In Habeas Corpus Proceedings

2. Whether The Enforcement Of The Substantive Rights Of Connecticut Prisoners Requires The Availability In Superior Courts of An Adequate Remedy.

PROCEEDINGS BELOW -

Appellant Donald LaReau filed his pro se application for a writ of habeas corpus* in the state superior court on or about April 20, 1974 contending that he was illegally deprived of his liberty in that parole authorities were depriving him of a prompt preliminary hearing of probable cause as well as conditioning the availability of that hearing at the expense of appellant posting bond. On June 11, 1974, because of the state's failure to comply with federal due process requirements in habeas corpus proceeding appellant LaReau filed pursuant to Title 28, Section 2254(b) a federal application for a writ of habeas corpus* in the United States District Court in Connecticut contending substantially the same deprivations described above, including the unavailability of a speedy and adequate remedy for indigents in the state superior courts. Exactly eight days later, on June 19, 1974, the honorable M. Joseph Blumenfeld, acting sua sponte, dismissed the petition without a hearing as well as without commenting on appellant's allegation of the unavailability of adequate habeas corpus remedies for indigent prisoners.*

From that decision and the District Court's granting of a certificate of probable cause on June 28, 1974, appellant brings this appeal.

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* The pertinent papers are contained in Appendix A, attached to this brief.

STATEMENT OF THE FACTS

On May 29, 1974, petitioner-appellant was sentenced by the Superior Court for Hartford County for the offense of escape, (Conn. Gen. Stat. Sec. 53-155) and received an effective sentence of not less than five nor more than eleven years.

On August 27, 1973, appellant LaReau was released on parole by decision of the Connecticut Board of Parole.

On April 10, 1974, appellant LaReau was arrested without warrant by the Simsbury, Connecticut Police Department and charged with various misdemeanors.

On April 11, 1974 a parole violation detainer was issued against appellant by a parole officer of the Division of Parole, Connecticut Department of Corrections.

On April 16, 1974, petitioner requested parole authorities to afford him a prompt probable cause hearing to determine whether or not there existed probable cause to believe that appellant had violated the conditions of his parole agreement, and whether a resumption of his incarceration was a proper disposition of his case.

The appellant remained incarcerated pursuant to the parole violation detainer for a full month before an attempt was made

by the Disvision of Parole, Connecticut Department of Corrections to afford him the required hearing.

The Division of Parole attempted to justify this unreasonable delay by informing petitioner-appellant in response to his request for a hearing that he would not be afforded one until he posted bond on the pending misdemeanor charges.

On or about April 18, 1974, the appellant filed a petition for a writ of habeas corpus with the state superior court alleging illegal custody by parole authorities. Before appellant could be heard on his application for a writ of habeas corpus, he was returned to prison on August 8, 1974. To contest the inadequate state remedies for habeas corpus petitions filed by prisoners, pro se, he filed a federal habeas corpus which has resulted in this appeal.

I. INTRODUCTION

> Today, more and more of us are beginning to realize that the law does not always work for us, that although the statue of justice wears a blindfold, the administrators of justice do not. Laws are made by man, they are broken or upheld by men, and they are administered by men. We who live under the law find ourselves in fear of it, and oppressed by it, and are asking for change. And today, members of that august group in black robes who administer the law are seeking to make changes that will benefit the people.[1]

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1. Clark, Prisons: A Perspective From Within, 6 Suffolk U.L. Rev. 775 (Summer 1972).

These words express both the despair of frustrated hopes and the positive belief of a former prisoner that the judiciary will restore and protect his fundamental rights. As this brief will indicate, prisoners possess a constitutional and statutory catalogue of post-conviction "conditions" rights; at present, however, the list merely highlights the broad gap existing between such rights and judicially administered remedies. As long as remedies remain ineffective or unavailable, the promise born of the rights created remains unfulfilled. We know from history and recent experience that when redress through legal process is close to large segments of our population, contempt for the law multiplies and is expressed in increased violence and criminal activity

It is not the purpose of this brief to discuss recent developments respecting the substantive and procedural rights of prisoners after they have been convicted; this has been adequately described in recent law review articles.[2] There have been considerable inroads made into the traditional "hands off" doctrine, on the basis which courts formerly deferred matters of prisoner welfare to the presumed administrative expertise of prison officials. Today, the prisoner "retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." Jackson v. Bishop, 404 F. 2d 571, 576 (8th Cir. 1968). In addition, the Connecticut prisoner is theoretically

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2. Turner, Establishing The Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation, 23 Stan. L. Rev. 473 (1971) Note, Constitutional Right of Prisoners: The Developing Law; 110 U. of Pa. L. Rev. 985 (1962). Comment, Beyond The Ken of The Courts: A Critique of Judicial Refusal to Review The Complaints of Convicts, 72 Yale L.J. 506 (1963)
3. See 110 U. Pa. L. Rev., Supra note 2.

protected from the arbitrary actions of prison officials by the writ of habeas corpus and, in the federal courts, the civil rights complaint. Johnson v. Avery, 393 U.S. 483, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969); Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970) aff'd sub. nom; Younger v. Gilmore, 404 U.S. 15, 30 L. Ed. 2d 142, 92 S. Ct. 250 (1971). These procedural vehicles are essential to the protection of a prisoner's substantive liberties. It is clear, however, that both procedural and substantive rights can be effectively nullified by inadequate judicial treatment of state habeas corpus petitions. Consequently, in recent years the Supreme Court of the United States has required that habeas corpus and other review proceedings comport with constitutional due process requirements. See, e.g., Townsend v. Sain, 372 U.S. 293, 9 L. Ed 2d 770, 83 S. Ct. 745 (1963). There is no question that these requirements are binding on state courts, since they involve substantive constitutional rights.

Two very typical habeas corpus proceedings currently pending in the Hartford Superior Court, Richard Smith v. Warden, No. 183945, Htfd. Sup. Ct. and Roger Lubesky v. Warden, No. 182480, Htfd. Sup. Ct., demonstrate, however, constitutionally impermissabl treatment of state habeas corpus petitions that has become commonplace in the superior courts of Connecticut. Each of the aforementioned petitions were filed well over a year ago and have been subject to inordinate delay expressly forbidden by the federal courts. Smith v. Kansas, 356 F2d 624 (10th Cir. 1966); U.S. ex re

Harper v. Rundle, 279 F. Supp. 1013 (E.D. Pa. 1967). Impermissable summary treatment of state habeas corpus petitions has also become commonplace in the state of Connecticut.[4] Petitioner-appellant regrets that he cannot present more information, but several letters of inquiries to the deputy court administrator continue to beg answers.[5] The judicial hodgepodge of habeas corpus review procedures presently employed has a deleterious effect on administration of criminal justice in Connecticut. With remedial infirmaties localized in Connecticut courts, petitions for redress of constitutional violations are increasingly processed in federal courts. This constant review and correction of the state judicial process must ultimately injure the delicate balance of federalism by usurping the jurisdiction of the Connecticut Superior Courts over the state's criminal justice system,, a matter that is admittedly of local concern rather than federal.

By restoring integrity to the processing of "conditions" petitions, the United States Court of Appeals, Second Circuit, will demonstrate that it is protective of basic individual rights. The Court will, beyond that consideration, fulfill its most important function in a legal process under a constitutional democracy, that of assuring the poorest and most deprived state citizens that their rights are inviolate, and that the laws, rather than guns, are the tools by which these rights will be guaranteed.

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4 See also Bergeson, California Prisoners: Rights without Remedies, 25 Stan. L. Rev. 1 (1972)

5 Copies of letters contained in Appendix A

II. Connecticut SUPERIOR COURTS ARE CAUSING SERIOUS INJURY TO THE DELICATE BALANCE OF FEDERALISM BY FAILING TO COMPLY WITH FEDERAL DUE PROCESS REQUIREMENTS INTHABEAS CORPUS PROCEEDINGS.

The law governing our fundamental rights is a single system with one ultimately authoritative voice, the Supreme Court of the United States; yet the sources of that law are diverse, making the task of harmonizing them exceedingly complex.[6] When matters of constitutional importance are at issue, federal law necessarily regulates the exercise of state authority in order to secure uniformity. Indeed, in the federal system, the assumption is that although state courts may err in applying federal constitutional law, once corrected they will enforce the principles declared. Thus, while the state prisoner posses a penumbra of federally protected rights requiring uniformity in their administration, state courts have the primary responsibility for administration of criminal justice and are accorded an opportunity to use their own corrective processes to vindicate the fundamental rights of prisoners. Federal corrective processes should not and do not intrude upon state systems unless those systems are inadequate to protect the constitutional rights of prisoners.[7]

The so-called "trilogy" of Fay v. Noia, 372 U.S. 391, 9 L. Ed 2d 770, 83 S. Ct. 745 (1963), Townsend v. Sain, supra and Sanders

6 Henry M. Hart, Jr., The Relations Between State and Federal Law 54 Colum. L. Rev 489 (1954)

7 Townsend v. Sain, supra;
Becker, Collateral Post Conviction Review of State and Federal Criminal Judgements on Habeas Corpus and on Section 2255 Motion View of a District Judge, 33 F.R.D. 452, 490 (1963).

v. United States, 372 U.S. 1, 10 L. Ed. 2d 148. 83 S. Ct. 1068 (1963), have made it clear, however, that federal courts will not tolerate insufficient state court procedures for the enforcement of prisoner's federal rights; nor will they require exhaustion of such inadequate remedies before they act upon federal habeas corpus petitions. Marino v. Ragen, 332 U.S. 561, 92 L. Ed. 170, 68 S. Ct. 240 (1947). Thus, when state processes appear inadequat by federally established standards, relitigation in federal forums becomes an essential safeguard. The cost of state-federal frictio in this area is the price necessarily paid for rigorous supervision of constitutional rights in a dual sovereignty system.

Prior to Fay v. Noia trilogy, "the existence, notorious and oft-exhibited, of grave inadequacies in the states' criminal procedures, both original and post-conviction (made) the federal habeas corpus jurisdiction a necessity."[8] Government officials and legal commentators as well recognized the importance of due process in post-conviction procedures:

> If any proposition can be stated dogmatically in this field it is this: the state courts must provide post-conviction corrective processes which is at least as broad as the requirements which will be enforced by the federal courts in habeas corpus through the due process clause of the 14th Amendment. A state can call this remedy whatever it wants, but it must provide some corrective process. cf. Mooney v. Holohan (1935) 294 U.S. 103 [9]

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8 Bator, Finality In Criminal Law & Federal Habeas Corpus for state Prisoners, 75 Harv. L. Rev. 441, 521 (1963)

9 Memorandum of Department of Justice of California, Special Committee On Habeas Corpus, Report To The Conference of Chief Justices, App. at 12 (Council of State Gov. 1953)

After the trilogy there was a consensus that states had neglected, through legislative or judicial decree, to make major changes in their post-conviction procedures to conform to due process requirements; though many states revised habeas corpus procedures, considerable variations existed in the acope and availability of such remedies and most systems remained grossly inadequate. Case v. Nebraska, 381 U.S. 366, 14 L. Ed 2d 422, 85 S. Ct. 1486 (1965). The only realistic and constitutionally sound remedy was for federal courts to dispose of the great bulk of state post-conviction petitions. The extent of the continuing need for federal habeas corpus post-conviction jurisdiction has correlated directly with the adequacy of state procedures.[10] The only solution that maintains the balance and effectiveness of federalism -- by assuring federal courts are not inundated with habeas corpus cases and retaining state control over the administration of criminal justice -- is development of state judicial machinery equipped to adjudicate, after a final conviction, all the constitutuionally protected claims of the petitioner.[11]

Theoretically at least, Connecticut prisoners may enforce their substantive rights through a habeas corpus procedure in the state courts. But in practice, the indigent petitioner filing his habeas corpus, pro se, is subject to long delays and

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10 American Bar Association, Post Conviction Remedies, App. Draft 1968

11 Brennan, Some Aspects of Federalism, 39 N.Y. U.L. Rev. 945 (1964)

never receives the same speedy services from the court clerks, no matter how professionally and accurate his petition may be drafted. The indigent applicant for a habeas corpus petition cannot ever acquire a hearing on his claims unless his papers are signed by a commissioner of the superior court. Pleadings may be signed only by members of the Connecticut Bar. 99 C. 250

The practice in Connecticut Superior Courts does not begin to comply with constitutional or even state procedural requirements. The grossly inordinate delay of hearing the two cases cited at page 6, supra Smith & Lubesky, demonstrates that in the superior courts particularly, the processing of petitions contains numerous and intolerable constitutional infirmaties. Delayy amounts to denial where conditions and length of confinement are challenged. The Connecticut habeas corpus procedure, a system based on various decisions and a paucity of legislation, apparently leaves wide discretion for courts to frame their own ad hoc procedures for processing habeas corpus petitions.[12]

If the Connecticut Courts wish to prevent erosion of their role in the federal system, to have significant influence on the Connecticut criminal justice system, to assure finality of convictions, and to prevent collateral attacks in federal courts via post-conviction habeas corpus petitions, then they must

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12 See Letter of inmate Leo Savin contained in Appendix A

comply in practice as well as theory with federal procedural requirements. Connecticut courts must finally heed the advice of judges, scholars and the profession,[13] and effectuate, after a decade, the constitutional mandate of the Fay v. Noia trilogy and subsequent federal cases. This Court must promulgate procedural guidelines for the processing by superior courts of habeas corpus petitions respecting the conditions of confinement. Such guidelines must require that the evidence hearing on the validity of the petition have been fully developed through adequate discovery in the state court, and determination of the facts and federal and state legal issues presented be explicitly stated in an opinion of the reviewing court. Such procedures are not merely suggestions, but requirements in a federal system that entrusts the maintenance of fundamental rights to state courts. As the Chief Justice of the Supreme Court of the United States recently stated:

> "There is a solution for the large mass of state prisoner cases in federal court -- 12,000 in the current year. If the states will develop adequate post-conviction procedures for their own state prisoners, this problem will largely disappear and eliminate a major source of tension and irritation in state-federal relations." Burger, The State of the Judiciary, 56 A.B.A.J. 929, 931 (1970) See also In Re Shipp, 62 Cal. 2d 547, 554, 399 F 2d 571, 43 Cal. Rptr. 3 (1965)

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13 A.B.A. Draft, supra at 25

III. ENFORCEMENT OF THE SUBSTANTIVE RIGHTS OF CONNECTICUT PRISONERS REQUIRES THE AVAILABILITY IN SUPERIOR COURTS OF AN ADEQUATE REMEDY.

> The rights here asserted are, like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. Watson v. City of Memphis, 373 U.S. 526 533, 10 L. Ed 2d 529, 83 S. Ct. 1314 (1963).

Rights without remedies for their enforcement are no rights at all. Without access to effective judicial process by which rights can be vindicated, the guaranty of liberty is meaningless.

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenerever he receives an injury. One of the first duties of government is to afford that protection.
>
> * * *
>
> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. Marbury v. Madison, 8 U.S. (1 Cranch) 137, 163 (1803).

Certainly persons in prisons, like other individuals, have the right to petition the government for redress of grievances, which includes effective access of prisoners to the courts for the purpose of presenting their complaints. Cruz v. Beto, 405 U.S. 319, 31 L. Ed 2d 263, 92 S. Ct. 1079 (1972) Effective acces may be frustrated because denial of relief is readily predictable or because the procedure for raising the issue is inadequate in

either the court or in earlier non-judicial proceedings.

The fundamental instrument for safeguarding prisoners' substantive rights against arbitrary and lawless state action in Connecticut is the writ of habeas corpus. Because it is the most significant remedy for the detained citizen, its effectiveness as a protector of substantive rights must be guaranteed:

> The scope and fexibility of the writ--its capacity to reach all manner of illegal detention--its ability to cut through barriers of form and procedural mazes--have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure the miscarriages of justice within the reach are surfaced and corrected. Johnson v. Aver supra, at 721.

Courts reviewing alleged abridgements of a prisoner's RIGHTS are oblidged to make the habeas corpus procedure meaningful; post conviction proceedings must be more than a formality:

> There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges this error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involved: "The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary." Townsend v. Sain, supra, at 312, 9 L. Ed. 2d at 765. Harris v. Nelson, 394 U.S. 296, 292, 22 L.Ed 2d 281, 89 S. Ct. (1962)

An example discussed recently by Chief Justice Burger

suggests both the scope of prisoners' protected rights and the serious attention owed by courts to providing adequate remedies for them:

> One illustration may serve to suggest that alternatives must be explored to deal with prisoner petitions so that they will be more promptly disposed of without calling on the entire panoply of the federal courts. One Prisoner filed a complaint in a federal district court under the Civil Rights Act, claiming that a prison guard had arbitrarily taken seven packages of cigarettes from him without justification. The district judge dismissed the complaint. The prisoner then took an appeal to the Court of Appeals for the Third Circuit, where three circuit judges, after reading briefs and considering his arguments, wrote an opinion remanding the case to the district court with directions to conduct a trial on the merits. Russell v. Rodner, No. 72-1788, May 29, 1973). Under established procedures the three circuit judges first had to submit their proposed opinion or one of the three to the other six members of the court of appeals who were not assigned to the case.
>
> The Chief Justice went on to point out that:
>
> The first reaction of many people would be that such a case was governed by the ancient maxim of the law that courts need not take notice of trifles. But to a man confined in prison, more often than not in a cell six-by-eight feet, seven packages of cigarettes do not seem a trifle. Apart from being private property, cigarettes are a source of comfort to some people. When the district judge received the court of appeal's opinion, he plaintively asked if he could dispose of the case by sending the prisoner three dollars or seven packs of cigarettes. 59 A.B.A.J. 1125; 1126 (1973).

The habeas corpus remedy in Connecticut's superior courts is decidely imaginary when measured by the due process standards enunciated by the Supreme Court of the United States. Federal courts, and inferentially state review courts (see Becker, supra

at 472), must initiate de novo habeas corpus proceedings when earlier proceedings fail to reach and reliably resolve factual di putes through full and fair hearings. The opportunity for redres that embraces the right to be heard, to present evidence and to make legal arguments, because it is the typical, not the rare cas in which constitutional claims turn upon the resolution of contes ed factual issues. Townsend v. Sain, supra, 372 U.S. at 316. Subsequent decisions have made it clear that Townsend and its progeny prescribe minimum standards to which the habeas corpus remedy must conform. See, e.g. Wright v. Disckson, 336 F. 2d 878 (9th Cir. 1964).

The teachings of these cases, involving collateral attac upon state convictions, are equally applicable and even more cri tical to charges by prisoners of interference with constitution- ally protected rights within the penal institution. Recent dec- isions have attempted to reduce the potential for arbitrarily imposed punishment, see, e.g., Cluchette v. Procunier, 328 F. Supp. 767 (1971), aff'd_____F.2d_____, and have directed that parole decisions be made on the basis of full and fair review proceedings. See In Re Sturm, supra. Judicial insistence upon procedural due process in "conditions" habeas corpus proceedings has occasionally involved the appointment of masters or referees to gather facts for the court. See In Re Riddle, supra, 57 Cal 2d at 851; In Re Jones, 57 Cal. 2d 860, 863, 372 P. 2d 310, 22 Cal. Rptr. 478 (1962).

Most significantly, prisoners may not be denied reasonabl

access to the courts; all other substantive rights depend on such access, Ex Parte Hull, 312 U.S.546, 85 L.Ed 1034, 61 S. Ct. 640 (1941), which is for prisoners, like the vote for other citizens, "preservation of all rights." Harper v. Virginia Board of Directors, 383 U.S. 663, 667 16 L.Ed 2d 169 86 S. Ct. 1079 (1966). Thus, prison officials may not attempt to delay legal proceedings or correspondence addressed to the courts, nor may they deny prisoners access to the materials necessary for the preparation of their petitions. See Gilmore v. Lynch, 317 F. Supp. 105 (N.D. Cal, 1970), aff'd sub nom. Younger v. Gilmore, 404 U.S. 15, 30 L.Ed 2d 142, 92 S. Ct. 259 (1971). Likewise, judicial remeddies must comport with constitutional procedures. The courts are the final forum for the vindication of prisoner rights; if one cannot have his "day in court", then there is no means of enforcing due process requirements in prisons. The judicially mandated principle of "access to courts" is rendered meaningless if courts will not vindicate rights. "Access" surely means more than the right to prepare and process a petition up to but not beyond the door of the court. "It encompasses all the means a defendant or a petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him." Gilmore v. Lynch , supra, at 110.

Due process therefore embodies effective remedies for vindication of one's post-conviction rights from the preparation of one's petition through every stage of adjudication, in both

judicial and non-judicial forums. It requires that Connecticut prisoners, like all citizens, have full access to Connecticut courts to protect their fundamental rights.

What is the result of a system in which incarcerated citizens have inadequate remedies to enforce their substantive rights? A person who receives what he considers unfair treatment from the legal process is likely to become a difficult subject of rehabilitation. Affording a prisoner remedial procedures will maximise his participation in decisions which concern him, encourage self-respect and independence, and assist in preparing him for life in the community.

> "Until Connecticut revives its rules to permit indigents reasonable access to its courts for purposes of habeas corpus, cf. Boddie v. Connecticut, ___ U.S. ___, 39 U.S.L.W. 4294 (U.S. Mar.2, 1971), this court will deem that remedy exhausted, for the purpose of 28 U.S.C. 2254(b), without a showing by an indigent of a rejected attempt to file a petition in a state court. United States ex relFloyd Parsons v. Frederick E. Adams, Warden, No. 14388 (D. Conn. 1972).

IV. CONCLUSION

Courts have an essential responsibility in the legal process to enforce the constitutional rights of all persons, including prisoners. They have inherent power to do all things that are reasonably necessary for the administration of justice; rendering of justice is in fact the raison d'etre of the judicial system. This fact is expressed as a fundamental responsibility of each judge in the canons of judicial ethics. In this case, the United

States Court of Appeals, Second Circuit, has the responsibility of reassuring justice to each imprisoned citizen, through its mandate to the Connecticut superior courts.

If this court finds, as the appellant has argued, that the enforcement of the substantive rights of Connecticut Prisoners requires the availability in superior courts of an adequate remedy, he requests that the court reverse the decision below and remand with an order that the district court hold an evidentiary hearing on the merits.

Respectfully submitted

/s/ Donald J. LaReau

Donald J. LaReau
Box 100
Somers, Connecticut

In Propria Personam

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief and appendix was forwarded to Mr. Myron H. Hanson, Division of Parole, 340 Capitol Avenue, Hartford, Connecticut, 06115, postage prepaid, On November 21, 1974.

Donald J. LaReau

Donald J. LaReau
Box 100
Somers, Connecticut 06071

Oct. 1, 1974

r. Thomas Abraham, Chief Clerk
Hartford Superior Court
Drawer D, Station A
Hartford Conn. 06106

Dear Mr. Abraham:

Pursuant to Connecticut General Statute, Section 1-19, every resident shall have the right to inspect public records, including those of judicial bodies. I would be grateful if your office would provide me with copies of all habeas corpus calendars held at Somers Prison during the year 1974. And with each calendar, a record of each petitioner who enjoyed a full hearing on his writ as scheduled. Thank you.

Very truly yours,
Donald J. LaReau

cc:file

21

Donald J. LaReau
Box 100
Somers, Connecticut

November 4, 1974

Thomas H. Abraham
Deputy Court Administrator
Superior Court
Drawer D, Station A
Hartford, Connecticut 06106

Dear Mr. Abraham:

Section 1-19 Of the Connecticut General Statutes provides that, ". . .every resident shall have the right to inspect public records, including those of judicial bodies." I request copies of the complete assignments of habeas corpus matters held at the Connecticut Correctional Institution, Somers beginning in 1970 through to October, 1974. I made a similar request to you by letter dated October 1, 1974, but you have failed to reply. If you object to providing me with the above records, please set forth in writing your reasons for denial. Thank you.

Very truly yours,
Donald J. LaReau
Donald J. LaReau

cc:file

Donald J. LaReau #23937
Box 100
Somers, Connecticut 06071

November 14, 1974

Thomas H. Abraham
Deputy Court Administrator
Superior Court
Drawer D, Station A
Hartford, Connecticut 06106

Re: Record of Assignment of
Habeas Corpus Matters,
Somers, Connecticut
(State Prison)
R. Smith v. Warden No. 18394
F.B. Yoo v. Warden No. 18247

Dear Mr. Abraham:

By letters to your office dated October 1 and November 4, 1974, I requested pursuant to Section 1-19 of the Connecticut General Statutes information regarding the assignment of habeas corpus matters at the State Prison in Somers, Connecticut. There has been no response from your office whatsoever. Every resident, including prisoners, shall have the right to inspect public records, including those of judicial bodies and arbitrary interference by a state agent with personal interests is a denial of due process.

I request once again copies of the complete assignment of habeas corpus matters at the State Prison during the years 1970 through 1974. Also, the complete proceedings of the two cases captioned above. If you do not want to provide me with same, please state your reasons for said denial.

Yours very truly,

Donald J. LaReau

Donald J. LaReau

cc:file
Chief Justice Charles S. House
Atty. Richard Cramer

Leo E. Savin
Box 100
Somers, Connecticut 06071

September 15, 1974

Barbara M. Milstein, Atty.
National Prison Project
1346 Conn. Ave., N.W., Suite 1031
Washington, D.C. 20036

Dear Mrs. Milstein:

I referred the matter on which I originally consulted your office to the University of Connecticut Law School as per instructions of Carol Horwitz, and the prisoner has contacted them. I am sure that Professor Parley's staff is well-intentioned, and capable.

However, there is another point about which there is some concern, and which I am fairly sure that Professor Parley's staff wouldn't consider tackling: i.e., there exists in Connecticut law no provisions whereunder an indigent prisoner can effectively bring an habeas corpus application, or any other civil complaint in the State Courts. Regarding habeas corpus applications specifically, see U.S. ex rel. Parsons vs. Adams, Warden Connecticut State Prison, _____ F. Supp. _____, _____ (June 24, 1971, D. Conn.; Blumenfeld, J.).*

I am sorry that I don't have the specific volume and page numbers re Parsons handy for you, but I'm sure the opinion is readily available and can easily be discovered by your staff with little effort. I followed the case at the time, and know that the State made no real effort to dispute Judge Blumenfeld's opinion or to obtain any later reversal in that respect. And I know further that the State has made no legislative or other legal attempts to rectify the situation since; nor has any attorney in the State since then either made any legal attempt to follow the lead in Parsons or to bring about any change in Connecticut's attitude.

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* See U.S. ex rel. Rush vs. York, 281 F. Supp. 779, 782 (D. Conn., 1967); U.S. ex rel. Robinson vs. York, 281 F. Supp. 8 (D. Conn., 1968); and see also, Boddie vs. Conn., 401 U.S. 371; 39 U.S.L.W. 4294 (U.S. March 2, 1971).

The following is extracted from the Parsons decision: "...This court has had prior occasion to canvass Connecticut's intricate scheme for affording indigent habeas corpus petitioners access to its courts without payment of court fees. United States ex rel. Rush vs. York, 281 F. Supp. 779 (D. Conn. 1967). In sum, the scheme permits a waiver of fees only if the indigent accepts the representation of a public defender, see Conn. Gen. Stats., Section 52-259a; State vs. Hudson, 154 Conn. 631, 636, 228 A. 2d 132 (1967), but habeas corpus proceedings do not fall within the ambit of matters for which public defenders may be appointed. See id.; Conn. Prac. Book, Section 472D. An indigent petitioner with private counsel is not exempted from the fee. State vs. Reddick, 139 Conn. 398, 400, 94 A. 2d 613 (1953); State vs. Clark, 4 Conn. Cir. 570, 572, 237 A. 2d 105 (1967)...

"The consequence of these nonprovisions for indigent habeas petitioners is that the remedy is simply unavailable if they do not pay the fee, whether they are represented by private counsel or attempt to proceed pro se. Accordingly, this court deems the state habeas remedy for indigent prisoners an exhausted, because unavailable remedy...

"Until Connecticut revises its rules to permit indigents reasonable access to its courts for purposes of habeas corpus, cf. Boddie vs. Connecticut, 401 U.S. 371, 39 U.S.L.W. 4294 (Mar. 2, 1971), this court will deem that remedy exhausted, for purposes of 28 U.S.C. 2254 (b), without a showing by an indigent of a rejected attempt to file a petition in a state court. Respondent's motion to dismiss for lack of jurisdiction and failure to exhaust state remedies is denied."

As you can see, Judge Blumenfeld was unequivocal. I know of no reported contradictory or conflicting opinion of any of his fellow district judges.

If you will bear with me further, I bring you no nonsense and no cheery frivolousness. Similarly, I'm not trying to pick any arguments over semantics. Straight scoop.

Consider, if you will, the following:

1. Prior to 1959 there was absolutely no statutory authority whereunder an indigent prisoner in Connecticut

could get an habeas corpus application filed by a court clerk. Such applications were routinely and perfunctorily rejected by the clerks.

2. In 1959 the Connecticut General Assembly, in Special Session, enacted Sec. 52-259a of the General Statutes, which provided for a waiver of the filing fees for an application by the public defender. This section remains in effect.

3. There is no provision anywhere in the General Statutes for the appointment of a public defender in post-conviction habeas corpus cases; but only in conjunction with initial arrests and original criminal prosecutions and direct appeals from convictions resultant thereof. Gen. Stat., Secs. 54-80, 54-81; Prac. Bk., Sec. 472D.

4. Connecticut Practice Book, Section 472D, provides for the appointment by a court of "special" public defenders in certain cases; habeas corpus matters are not included as being within the purview of appointments proper to be made under the section, however.

5. Connecticut does have an unwritten arrangement which is used in habeas corpus cases. This operates as follows:

6. The indigent prisoner, with or without the assistance of institution attorneys (there are two salaried attorneys here), fills out a standard form purporting to be a petition for writ of habeas corpus, along with an affidavit of poverty, and mails this to the Clerk of The Superior Court (notarized, &c.). Institution attorneys do not provide representation.

7. At some later date, usually two to three months from the mailing of that petition, a special habeas corpus court is convened in the Boardroom here at the institution. This special court is authorized by Gen. Stat., Sec. 51-186, and was created to eliminate the necessity of having to transport prisoners to a public court and having to conduct habeas corpus hearings in a public or publicly-accessible setting. This is a maximum security prison, and the general public does not have access to the Boardroom under any circumstances. Wethersfield Prison, at the time, was similarly considered.

8. At this hearing a "special public defender"

is appointed by the Court to represent the indigent prisoner in the habeas corpus proceeding. This appointment of a special public defender is made ostensibly under the provisions of Sec. 472D (but see para. 4., preceding, and Parsons).

9. At still a later date, if ever (and, in many cases, it is never --), the now appointed special public defender prepares and files with the court an "amended" petition or application for habeas corpus. This, presumably, is deemed authorized under Sec. 52-259a of the General Statutes (but see paragraphs 2 and 3, preceding); and it is this "amended" pleading which -- again, if ever -- is still later argued before the court and subsequently decided by the court.

Here I wish to point out that at least several months have elapsed in the matter since the initial mailing of the indigent's application to the court clerk. The prisoner, regardless of any real merit his application may have, languishes in prison with little or no contact with his court-appointed special public defender.

A very common practice of these special public defenders follows approximately these steps: (a.) he does nothing by way of actively pursuing the case, and does this for as long as possible; (b.) if the indigent petitioner starts writing him letters about it, he either totally ignores the letters, or he responds with stalling tactics; (c.) if the petitioner persists in writing to him, or if the petitioner complains to the court over the excessive delays, the fact that the lawyer has done nothing, &c., the lawyer withdraws from the case -- which puts the indigent petitioner back on square one.

I know of one attorney (who, by the way, is related to a very highly respected Superior Court Judge) who has been appointed to represent indigent prisoners in at least fifteen (15) habeas cases, and he has not attempted to pursue a single one. He has withdrawn every time -- after a suitable delay, of course, in each case. It's a matter of record.

Further, in my experiences here -- and, unfortunately, I've spent several years here, and have studied and gone through the mill -- I know of only two cases since 1959 which were decided in Boardroom hearnings in favor of indigent prisoners; one, in 1959, was an outright case of

wrongful imprisonment, and I was told of a later one. I'm referring here specifically to applications brought primarily challenging the judgment under which a prisoner is held, not applications brought to present other civil complaints, although they fall in the same category insofar as their treatment is concerned. Indigent prisoners have no civil remedies in Connecticut.

In the vast majority of the applications, the matter simply is not actively pursued by the court-appointed special public defender. Of the few cases that are ultimately pursued by the special public defenders, virtually all must ultimately be appealed from the Boardroom level to the State Supreme Court; and appeals in Connecticut are notoriously lengthy and complex proceedings. They are presently under modification in the wake of a recent court decision which condemned appeals that take three or four years to be heard and decided.

I don't like to be so wordy. What this complex mess boils down to is this: First, there is no satisfactory legally extant procedure in Connecticut whereby an indigent prisoner can enter the courts; and, second, the psuedo-legal arrangement that does exist is such as to be virtually ineffective.

Last month we had a mass release of prisoners (about thirty from this institution alone), which -- ostensibly -- was via habeas corpus applications, &c. In fact, however, the releases were brought about in the wake of a State Supreme Court ruling resulting from a lengthy proceeding such as I have been describing, and the released did not involve appointments of special public defenders or individual hearings but were processed via an assembly-line type specially devised mass-handling procedure. They in no way represent or affect the arrangement in issue.

This is a "Class" matter, Mrs. Milstein. And I'm sure of my facts, and my interpretations.

The arrangement may be quite satisfactory to the courts of Connecticut and to all the attorneys who are regularly appointed in these matters -- but it certainly is grossly ineffective from the point of view of indigent prisoners, and it bears no resemblance whatever to a proper and adequate legal procedure and remedy.

I'm not asking you to tackle the matter yourself

-- although I have complete faith in your ability to do so -- but, knowing that you once practiced in New Haven and therefore have some familarity with Connecticut's approach to all things legal, I'm asking your considered opinion as to whether this psuedo-legal arrangement can be resolved into a better, more effective, legal procedure. And, if so, how would you suggest that such action most effectively be undertaken?

If you wish, I'll obtain and supply you with copies of the relevant statutes, &c., and copies of the cases in annotations -- and even Shepardize them for you; however, I think one reading of Parsons et al should be adequate for you to give sound opinion.

I hope I'll hear from you.

Sincerely,

Leo E. Savin, 23752
Box 100
Somers, Connecticut 06071

cc: (under cover-letter requesting opinion)

The Hon. Lowell P. Weicker, Jr. (Conn.)
United States Senate

The Hon. Mrs. Ella T. Grasso (Conn.)
House of Representatives

Yale University
School of Law
New Haven, Connecticut

Wesleyan University
School of Law
Middletown, Connecticut

Mr. John Williams, Atty.
New Haven
Connecticut

Sharon Pratt Dixon, Atty.
Antioch School of Law
Washington, D.C.

SUPERIOR COURT

HARTFORD COUNTY

ASSIGNMENT OF

HABEAS CORPUS MATTERS

Hon. Angelo G. Santaniello, Judge

To Be Heard At

CONNECTICUT CORRECTIONAL INSTITUTION

At Somers

Wednesday, September 25,1974

10:00 A.M.

FOR FULL HEARING

187380 A.Breen v. Warden
I.I.Sikorsky — S.J.O'Neill,AAG

- - -

182480 R. Lubesky v. Warden
I.I.Sikorsky — State's Atty. Waterbury

- - -

183945 R.Smith v. Warden
I.I.Sikorsky — S.J.O'Neill,AAG

- - -

186759 C.Serrano v. Warden
N.Cardwell — State's Atty. New Haven

- - -

185975 J,W.Carter v. Warden
I.I.Sikorsky — S.J. O'Neill,AAG

- - -

183978 W.Bryant v. Warden
I.I.Sikorsky — State's Atty. Hartford

- - -

189770 F.Blue v. Warden
J.S.Papa — S.J.O'Neill,AAG

- - -

188155 L.Cofone v. Warden
I.I.Sikorsky — S.J.O'Neill,AAG

- - -

178891 A.Chesney v. Warden
I.I.Sikorsky — State's Atty. Fairfield

- - -

182474 F.B.Yoo v. Warden
M.Heiman — S.J.O'Neill,AAG

- - -

185047 T.V.Lemieux v. Warden
R.B.Titus — State's Atty. New London.

- - -

187379 P.Pyburn v. Warden
R.B.Titus — State's Atty. Hartford

- - -

187388 W.Street v. Warden
W. Singer — S.J.O'Neill,AAG

- - -

185972 R.L.Hearnes v. Warden
M. Heiman — S.J.O'Neill, AAG

- - -

188849 G.Hughes v. Warden
I.I.Sikorsky — S.J.O'Neill,AAG

- - -

191143 W.Evans v. Warden

R.S.Cramer — S.J.O'Neill, AAG

- - -

188169 H.S.Dotson v. Warden

W.Singer — State's Atty Hartford

- - -

187376 J.Vadala v. Warden

D.Golub — State's Atty. New Haven

- - -

ON THE FOLLOWING CASES THE COURT WILL HEAR ONLY THE MOTION INDICATED.

186760 A.J.X.Davis v. Warden

L.I.Shankman — State's Atty. New Haven

Motion to Withdraw Petition.

- - -

185054 R.Snead v. Warden

R.Bletchman — State's Atty. Fairfield

Motion to Withdraw Petition.

- - -

186756 J.Aleria v. Warden

R. Bletchman — Pros. 9th Circuit Court

Motion for Transcript.

- - -

187408 J.Vadala v. Warden

A.Klau — State's Atty. New Haven

Motion to Withdraw as Counsel.

- - -

187376 J.Vadala v. Warden

A.Klau — State's Atty. New Haven

Motion to Withdraw as Counsel.

- - -

188161 D.E.Duby v. Warden

L.I.Shankman — State's Atty. Hartford

Motion to Withdraw Petition.

- - -

188842 D.Milner v. Warden

R.B.Titus — State's Atty. Hartford

Motion to Withdraw Petition.

- - -

186752 L.Pekoske vs Warden

W.Shaughnessy — State's Atty. Middlesex

Motion to Withdraw Petition.

- - -

188850 A.Polk v. Warden

M. Heiman — Chief State's Atty's. Office

Motion to Withdraw as Counsel

- - -

188154 F.Merril v. Warden

I.I.Sikorsky — State's Atty. Tolland

Motion to Dismiss.

- - -

189730 J.Carrona v. Warden

J.S.Papa — S.J.O'Neill,AAG

Motion to Withdraw as Counsel.

- - -

189758 B.Chase v. Warden

R.H.Bletchman — Chief State's Atty's. Office

Motion to Withdraw Petition.

- - -

188163 A.Szarwak v. Warden

L.I.Shankman — S.J.O'Neill,AAG

Motion to Withdraw Petition.

- - -

180453 H.McClain v. Warden

R.S.Cramer — State's Atty. New Haven

Motion to Withdraw Petition.

- - -

7

89767 [illegible].R.Thomas v. Warden

[illegible].Heiman — Chief State's Atty's.Office

Motion to Withdraw as Counsel

- - -

89757 [illegible].A.Blaine v. Warden

[illegible].B.Titus — S.J.O'Neill, AAG

[illegible]otion to Withdraw Petition.

- - -

88170 [illegible].Schaffer v. Warden

[illegible].Y.O'Connell — State's Atty. Tolland

[illegible]otion to Dismiss.

- - -

89303 [illegible]Latronica v. Warden

[illegible].S.Cra[illegible] — Chief State's Atty's Office

[illegible]otion to Withdraw as Counsel.

- - -

[illegible]143 Evans v. Warden

[illegible].Cra[illegible] — Chief State's Atty's. Office

[illegible]ion to Proceed in Forma Pauperis.

- - -

8

ON THE FOLLOWING CASES THE COURT WILL HEAR MOTIONS FOR APPOINTMENT OF ATTORNEY.

191110 W.J.Curry v. Warden

W.J.Curry, pro se — Chief State's Atty's.Office

- - -

191111 L.Bethea v. Warden

L.Bethea,pro se — State's Atty. Hartford

- - -

191112 J.Townsend v. Warden

J.Townsend,pro se — Chief State's Atty's.Office

- - -

191113 F.Blue v. Warden

F.Blue, pro se — S.J.O'Neill,AAG

- - -

191114 B.Snow v. Warden

B.Snow,pro se — Chief State's Atty's. Office

- - -

191115 A.Gonzalez v. Warden

A.Gonzalez, pro se — State's Atty. Fairfield

- - -

9

191116 C.Boyd v. Warden

C.Boyd, pro se — Chief State's Atty's. Office

- - -

191117 M.Walker v. Warden

M. Walker, pro se — State's Atty. New London

- - -

191118 R.Bethea v. Warden

R.Bethea,pro se — State's Atty. New London

- - -

191119 M.Surowiecki v. Warden

M.Surowiecki,pro se — Chief State Atty's Office

- - -

191120 R.F.Carr,III v. Warden

R.F.Carr,III,pro se — State's Atty New Londo

- - -

191121 R.C.Warner v. Warden

R.C.Warner,pro se — Chief State's Atty's.Office

- - -

191122 J.Parker v. Warden

J.Parker,pro se — State's Atty. Hartford

123 .D.Taylor v. Warden

.Tay ,pro se S.J.O'Neill,AAG

- - -

12 .Rose v. Warden

os se A.J.O'Neill,AAG

- - -

125 .J.Larke v. Warden

.Lark ,pro se Chief State's Atty's.Office

- - -

1 .Schaffer v. Warden

Sch ,pro se State's Atty. Tolland

- - -

1127 .E.Cyr v. Warden

E.Cy o se State's Atty. Hartford

- - -

1129 .Cubelli v. Warden

Cub ,pro se State's Atty. Fairfield

- - -

.Cubelli v. Warden

Cub ,pro se State's Atty. Fairfield

- - -

191129 M.Wells v. Warden

M.Wells,pro se Chief State's Atty's.Office

- - -

191130 R.A.Hatt v. Warden

R.A.Hatt,pro se Chief State's Atty's.Office

- - -

191131 J.LaBreck v. Warden

J.LaBreck,pro se State's Atty. Hartford

- - -

191132 K.Bruneau v.Warden

K.Bruneau,pro se State's Atty. Fairfield

- - -

191133 D.M.Bouvier v. Warden

D.M.Bouvier,pro se State's Atty. Fairfield

- - -

191134 E.O.Chevrette v. Warden

E.O.Chevretti,pro se State's Atty New Haven

- - -

191135 D.Davis v. Warden

D.Davis,pro se State's Atty. Hartford

- - -

191136 N.Talton v. Warden

N.Talton,pro se S.J.O'Neill,AA

- - -

191137 F.Bowden v. Warden

F.Bowden,pro se State's Atty. New Haven

- - -

191138 H.Acosta v. Warden

H.Acosta,pro se State's Atty. Hartford

- - -

191139 D.Mooney v. Warden

D.Mooney,pro se Chief State's Atty's. Office

- - -

191140 V.M.Cubano v. Warden

V.M.Cubano, pro se State's Atty Hartford

- - -

191141 A.L.Bigard v. Warden

A.L.Bigard,pro se State's Atty New Haven

- - -

011[illegible]	J.Distefano.v.	Warden
.Di[illegible]ano,pro se		Chief State's Atty's.Office

- - -

00566	D.J.LaReau v.	Warden
.J.[illegible]au,pro se		State's Atty. Hartford

- - -

005[illegible]	.Smith, Jr. v.	Warden
.Smi[illegible]r.,pro se		State'sAtty New Haven

THOMAS H. ABRAHAM
Y COURT ADMINISTRATOR

SUPERIOR COURT

HARTFORD COUNTY

ASSIGNMENT OF

HABEAS CORPUS MATTERS

Hon. Angelo G. Santaniello, Judge

TO BE HEARD AT

CONNECTICUT CORRECTIONAL INSTITUTION

At Somers

Wednesday, October 23, 1974

10:00 A.M.

FOR FULL HEARING

189765 E.EVANS V. WARDEN
D.A.DiCorleto — State's Atty. Windham

187380 A.W.BREEN V. WARDEN
I.I.Sikorsky, Jr. — S.J.O'Neill,AAG.

189088 D.LA REAU V. WARDEN
R.S.Cramer — S.J.O'Neill,AAG.

191143 W.EVANS V. WARDEN
R.S.Cramer — S.J.O'Neill,AAG.

187379 P.PYBORN V. WARDEN
R.B.Titus — State's Atty. Hartford

183073 B.PARKHURST V. WARDEN
R.B.Titus — S.J.O'Neill,AAG.

191164 R.SHERBO V. WARDEN
I.I.Sikorsky, Jr. — S.J.O'Neill,AAG.

191123 M.TAYLOR V. WARDEN
I.I.Sikorsky, Jr. — S.J.O'Neill,AAG.

182480 R.LUBESKY V. WARDEN
I.I.Sikorsky, Jr. — State's Atty. Waterbury

183945 R.SMITH V. WARDEN
I.I.Sikorsky, Jr. — S.J.O'Neill,AAG.

191598 G.MARSHALL V. WARDEN
I.I.Sikorsky, Jr. — State's Atty. Waterbury

189726 G.HUGHES V. WARDEN
T.See — State's Atty. Hartford

187388 W.STREET V. WARDEN
W.Singer — S.J.O'Neill,AAG.

188169 H.DOTSON V. WARDEN
W.Singer — State's Atty. Hartford

188162 E.HOLMQUIST V. WARDEN
W.Singer — State's Atty. New Haven

ON THE FOLLOWI[N]G CASES THE COURT WILL HEAR [A]T TH[E] MOTION INDICATED.

189754 C.DUKES V. W[ARDEN]
L.I.Shankman — Ch[ief] State Att[orney] Offic[e]

Motion to disappear as c[ounsel].
Motion for appointment of [Attorney]

189724 N.SANTONI V. [WARDEN]
R.Bletchman — St[ate's] Att[orney] Field

Motion for Transcr[ipt]

THOMAS H. ABRAH[AM]
Deputy Court Administ[rator].

CIVIL DOCKET

Jury demand date:

D. C. Form No. 107 Rev.

TITLE OF CASE	ATTORNEYS
DONALD J. La REAU VS MYRON H. HANSON, ET AL	For plaintiff: Pro Se 72 Seyms St. Hartford, Conn. For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: Petition for a writ of habeas corpus brought by a state inmate.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

DATE 1974	PROCEEDINGS	Date of Judgment
6-21	1. Petition for a writ of habeas corpus filed. Permission to proceed in forma pauperis GRANTED. Blumenfeld, J. m 6/24/74 . Memorandum of Decision filed, Blumenfeld, J.m 6/24/74. Copy of Memorandum of Decison mailed to petitioner and copy of petition and memorandum mailed to Atty General.	
6-24	2. JUDGMENT entered. Markowski, C. m6/24/74. Copies mailed to petitioner and Atty General .	
6-26	3. Notice of Appeal filed. Copy [illegible] to Atty [illegible].	
6-28	Re: Notice of Appeal"Construing this a an application of probable cause, it is granted. Blumenfeld, J.m .Copies of notice and docket mailed to New Haven and the U.S. Court of Appeals and Atty General.and to Mr. LaReau. Civil appeals management forms C & D mailed to U.S. Court of Appeals.	
7-29	File and copy of docket mailed to New Haven.	

A TRUE COPY [illegible]

A. M. Greco

Deputy Clerk

UNITED STATES DISTRICT COURT

DONALD J. LA REAU :
:
VS. : CIVIL NO. H-74-197
:
MYRON H. HANSON, ET AL :

INDEX TO RECORD ON APPEAL

CIVIL NO. _____

Vs.) MOTION TO PROCEED IN
Myron H. Hanson, et al) FORMA PAUPERIS
Respondents)

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) SS.

Donald J. LaReau being duly sworn deposes and says:

1. I am the petitioner in the above entitled action
2. I believe I am entitled and intend to bring this action in the United States District Court for the District of Connecticut against the above named Respondents.
3. I believe that I am entitled to the redress sought in this action.
4. I have assets of only $3.00 in the form of a commissary card and no other income.
5. Because of my poverty I am unable to pay the costs of this action, to give security therefor, or to employ an attorney.

Donald J. LaReau

Subscribed and sworn to before me this
_____ day of _____, 1974.

_____
NOTARY PUBLIC

District of Connecticut

Donald J. LaReau, Petitioner vs. Myron H. Hanson, et al Respondents	CIVIL ACTION NO. _____ MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL

Petitioner moves this court for an order permitting him to file this action in forma pauperis without prepayment of fees and costs or security therefor, and appointing Attorney Mary McCarthy, a member of the Connecticut Bar, to represent petitioner as provided in 28 U.S.C. sec. 1915 (d) and 18 U.S.C. 3006A (G), because as his attached affidavit indicates, petitioner is unable to pay such costs or give security therefor, and he cannot afford to employ an attorney. This motion is based on the complaint, affidavit and memorandum of law submitted herewith.

Dated June 9, 1974

Donald J. LaReau
72 Seyms Street
Hartford, Connecticut

United States District Court
District of Connecticut

Donald J. LaReau,
Petitioner

Vs.

John R. Manson, Commissioner of Correction, State of Conn.; Myron H. Hanson, Hearing Officer, Division of Parole, State of Connecticut; Arthur Blomberg, Parole Officer, State of Connecticut,
Respondents

Civil No. _____

Petition For Writ of Habeas Corpus

Comes now Donald J. LaReau and moves this Honorable Court pursuant to Title 28, Section 2254 of the United States Code to issue a writ of Habeas corpus to redress deprivations secured by the due process and equal protection clauses of the Fourteenth Amendment and to provide injunctive relief from further deprivation.

I PARTIES

1. Donald J. LaReau, petitioner herein, is a citizen of the United States, resident of Connecticut and is presently confined at the Community Correctional Center, Hartford, Connecticut.

2. John R. Manson is the Commissioner of Corrections

for the State of Connecticut and he is charged by statute with the custody of Petitioner LaReau.

3. Myron H. Hanson is the Hearing Officer for the Division of Parole of the State of Connecticut and in such capacity he presides over preliminary parole revocation hearings conducted to determine probable cause of alleged parole violations. Respondent Hanson is further responsible for provision of informal hearing structured to assure that finding of parole violation will be based on verified facts and that exercise of discretion will be informed by accurate knowledge of parolee's behavior.

4. Arthur Blomberg is a parole officer for the Division of Parole for the State of Connecticut and in such capacity he issued a parole violation warrant presently lodged against Petitioner LaReau.

II FACTS

5. Petitioner LaReau was sentenced to the Connecticut Correctional Institution, Somers by the Hartford Superior Court on May 31, 1970 to a term of five (5) to eleven (11) years for escape from a correctional institution, 2 counts.

6. Subsequently, on August 27, 1973, the petition

was released on parole from the prison term described in the preceding paragraph.

7. On April 10, 1974, the petitioner was arrested on forgery, larceny and motor vehicle charges by the Simsbury, Connecticut Police Authorities, said authorities setting bail bond for petitioner in the amount of twenty five hundred dollars ($2500.).

8. On April 16, 1974, Respondent Blomberg served notice on the petitioner advising him that a parole violation detainer had been filed because of petitioner's arrest, and in the event that petitioner posted bail or was released to bail on the pending charges, a preliminary hearing to determine whether there was probable cause that petitioner violated the condition of his parole would be granted.

9. Respondent Blomberg further advised the petitioner that the above described preliminary hearing would be granted only under the condition that he (petitioner) posted bail, but that if said bail was posted, petitioner would be returned to prison.

10. On May 2, 1974, subsequent to inquiries made with Respondent Blomberg by court appointed attorney Michael C. Blaney, petitioner received notice from his parole officer stating that a

(3)

preliminary hearing to determine whether there was probable cause to believe that petitioner violated the conditions of his parole would be held on May 16, 1974.

11. On May 16, 1974, a preliminary hearing as described in paragraphs 3 and 10, was conducted by the Respondent Myron H. Hanson. Said hearing was granted 36 days after petitioner's arrest and 30 days after the notice of the filing of the parole detainer. At all times mentioned herein petitioner remained confined at the Community Correctional Center, Hartford.

12. Petitioner contends that during the course of the preliminary hearing described in the preceding paragraph, he repeatedly objected to the reading of hearsay evidence into the record and was denied the right to confront and cross examine the adverse witness.

13. On May 25, 1974, Respondent Hanson gave notice to petitioner stating without explanation that he (Hanson) found probable cause petitioner violated the conditions of his parole.

(4)

14. Due process requires that parolee held pending final decision of parole board be given opportunity for hearing within reasonable time after he is taken into custody; minimal requirements include (A) written notice of claimed parole violations; (B) disclosure of evidence against him; (C) opportunity to be heard in person and to present witnesses and documentary evidence; (D) right to confront and cross-examine adverse witnesses, unless hearing officer specifically finds good cause for not allowing confrontation; (E) "neutral and detached" hearing body such as traditional parole board; (F) written statement by factfinders as to evidence relied on and reasons for revocation. U.S.C.A. Amend. 14.

15. On or about April 24, 1974, petitioner sought a speedy and adequate remedy to redress the deprivations described in the preceding paragraphs by filing a petition for writ of habeas corpus with the Hartford Superior Court. Petitioner contends that the failure of state authorities to hear his habeas corpus within a reasonable time has caused him to suffer grievous loss and has deprived him of any available and adequate remedy at law.

III LEGAL CLAIMS

16. Petitioner has been deprived of the right to confront and cross-examine the adverse witness during the course of his preliminary parole revocation hearing which is guaranteed by the due process clause to the Fourteenth Amendment.

17. Respondents threat to return petitioner to prison if bail bond is posted on pending charges is arbitrary and in violation of petitioner's right to bail.

18. Respondent's initial requirement that petitioner post bail in order to receive preliminary parole revocation hearing was an arbitrary and delaying tactic created to deprive petitioner of a prompt and convenient hearing folling his arrest.

19. Respondents practice to allow other parolees at liberty on bail bond after arrest is discriminatory and deprives petitioner of equal protection of the law.

20. The petitioner has no plain, adequate or complete remedy at law to redress the wrongs described herein. Petitioner has been and will continue to be irreparably injured by the actions of the Respondents unless this Court

grant the requested relief which petitioner seeks.

WHEREFORE, petitioner respectfully requests that this Court issue the writ of habeas corpus to bring his person and cause of imprisonment before the Court, to the ends that justice may be done.

Dated: June 9, 1974

Respectfully submitted,

Ronald J. LaReau
72 Seyms Street
Hartford, Connecticut
In Propria Personam

(1)

State of Connecticut)
County of Hartford) ss.

Donald J. LaReau being duly sworn, deposes and says, that he resides at 72 Seyms Street, Hartford, Connecticut; that he is the petitioner herein, and that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Donald J. LaReau

Subscribed and sworn to before me this

_____ day of _____, 1974.

_____

NOTARY PUBLIC

15114

15117

JUN 28 AM '74

10

FILED
U.S. DISTRICT COURT
D. CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DONALD J. LA BEAU : H74 197

v. : CIVIL NO. _____

BYRON H. HANSON, ET AL. :

MEMORANDUM OF DECISION

Petitioner, a state prisoner presently being detained by state authorities after his arrest on charges that he committed larceny by cashing a forged check and by having in his possession a stolen automobile, seeks both an injunction against state parole authorities who have filed a detainer against him, and also a writ of habeas corpus. The foregoing offenses were allegedly committed while the petitioner was on parole.

Although described as an injunction against a restriction on his right to release (provided he can furnish bail), the true characterization of the remedy he seeks is a writ of habeas corpus. As held in Preiser v. Rodriguez, ___ U.S. ___, 36 L.Ed.2d 439 (1973), when a state prisoner seeks immediate release from imprisonment his sole federal remedy is a writ of habeas corpus. Thus, even though he claims that the detainer is not justified for the reason that it is grounded upon the denial of insufficient parole revocation procedures, the redress he seeks requires that he first exhaust the

remedies available in the courts of the state. See Preiser v. Rodriguez, supra, 36 L.Ed.2d at 448.

While the merits of the issue which he seeks to raise in this action are not ripe for consideration, it may not be amiss to point out that it does appear that he was afforded a preliminary hearing for the purpose of determining whether there was probable cause to believe that he had committed a parole violation, that a notice setting forth the specific charges of violations of the conditions of his parole was furnished to him, and that a hearing on the issue of probable cause was held. He raises several issues as to whether these were in conformity to the requirements set forth in Morrissey v. Brewer, 408 U.S. 471 (1972). I do not decide, nor suggest, how these should be decided.

The petition may be filed without payment of fee, and the petition is dismissed.

SO ORDERED.

Dated at Hartford, Connecticut, this 19th day of June, 1974.

H. Joseph Blumenfeld

H. Joseph Blumenfeld
United States District Judge

DISTRICT OF CONNECTICUT

DONALD J. LA REAU :

:

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v. : CIVIL NO. H-74-197

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MYRON H. HANSON, ET AL :

JUDGMENT

This cause came on for consideration on a Petition for a Writ of Habeas Corpus, and the Court having entered its Memorandum of Decision under date of June 20, 1974, dismissing the said petition,

It is accordingly ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered, dismissing the petition for a writ of habeas corpus.

Dated at New Haven, Connecticut, this 24th day of June, 1974.

Sylvester A. Markowski
Clerk, United States District Court

By Francis J. Longo
Deputy-in-Charge

Certificate of Service

December 11, 1974

I certify that a copy of this notice of motion and affidavit and the accompanying pro se brief for relator-appellant has been mailed to the following parties:

The Honorable Robert K. Killian
Attorney General
State of Connecticut

Mr. Donald J. LaReau
Relator-Appellant

Phyllis Sklar Bernberger